Filed 10/23/12 In re E.L. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| In re E.L., a Person Coming Under the Juvenile Court Law. | 2d Juv. No. B239427<br>(Super. Ct. No. J067838)<br>(Ventura County) |
| VENTURA COUNTY HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>R.L.,<br><br>Defendant and Appellant. | |

R.L. appeals a judgment of the juvenile court terminating her parental rights to her daughter E.L. (Welf. & Inst. Code, §§ 300, 366.26.) We conclude, among other things, that: 1) the Ventura County Human Services Agency (HSA) gave proper notice under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) to the Colorado River Indian Tribe (CRIT) while this case was pending on appeal, and 2) the juvenile court's subsequent finding that ICWA does not apply is supported by the documentary evidence in the augmented record on appeal. We affirm.

FACTS

In June 2010, HSA filed a juvenile dependency petition (Welf. & Inst. Code, § 300) alleging that R.L. "has a history of ongoing mental illness," which

"impacts" her ability to care for E.L. HSA said R.L. has "thoughts of harming herself or [E.L's] half sibling."

The juvenile court found E.L. to be "a dependent of Ventura County Juvenile Court under the provisions of Section 300 of the Welfare and Institutions Code." It said, "[T]here are no reasonable means by which the child's physical health can be protected without removing the child from [R.L.'s] physical custody."

On a form entitled "Parental Notification of Indian Status," R.L. stated that she "may have Indian ancestry" in the Navajo tribe.

HSA mailed a "Notice of Child Custody Proceeding for Indian Child" (form ICWA-030) to the Bureau of Indian Affairs (BIA), the Navajo Nation, and the CRIT. HSA received signed certified mail return receipts from the BIA and the Navajo Nation. It also received a letter from the Navajo Nation stating, "We have been unable to verify the above child's eligibility for enrollment with the Navajo Indian Tribe based on the information you have provided." The letter to the CRIT was returned in the mail and marked "returned to sender."

On November 2, 2010, the juvenile court found ICWA "does not apply to" E.L.

The juvenile court subsequently terminated R.L.'s family reunification services. On February 14, 2012, it terminated her parental rights.

## DISCUSSION

### *ICWA Compliance*

R.L. contends the judgment terminating her parental rights must be reversed. She claims HSA did not comply with the ICWA because it did not properly serve notice to the CRIT. She notes the ICWA notice HSA sent in June of 2010 was subsequently returned in the mail stamped "returned to sender."

Congress enacted the ICWA with the intent that the best interests of Indian children are served by retaining their Indian tribal ties and cultural heritage. (*In re Desiree F*. (2000) 83 Cal.App.4th 460, 469.) "'The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings.'" (*In re Karla C.* (2003)

113 Cal.App.4th 166, 174.) Proper notice to tribes is of critical importance, and courts strictly construe the ICWA notice requirements. (*Ibid.*) "Under the ICWA, the tribe determines whether the child is an Indian child and its determination is conclusive." (*Ibid.*)

HSA claims that after receiving R.L.'s opening brief on appeal, it verified the CRIT's correct mailing address and sent a second "ICWA-030 form." HSA has filed a motion to augment the record with additional ICWA records, a transcript of three 2012 juvenile court ICWA hearings, and the juvenile court's latest ICWA findings made during the pendency of this appeal. R.L. did not file an opposition within the time period for making a response to that motion. We grant HSA's motion to augment. (*In re C.D.* (2003) 110 Cal.App.4th 214, 226 [where the agency did not initially comply with the ICWA, the record may be augmented to show subsequent ICWA compliance while the appeal is pending].)

The augmented record reflects that on May 23, 2012, HSA sent a letter to the juvenile court stating, "In a recent brief filed with the Court of Appeal, the appellate lawyer for [R.L.] argues that HSA's notice to one of the Indian tribes was defective . . . ." It requested the court to reappoint R.L.'s counsel for further ICWA hearings.

On May 30, 2012, the juvenile court granted HSA's request to hold "ICWA fix-up" hearings while this case was on appeal. It appointed counsel to represent R.L. at these hearings. R.L.'s counsel told the court that R.L. "understands the limited issue before the Court," but she decided not to attend because of a death in her family.

At a June 5th hearing, R.L.'s counsel appeared; R.L. did not attend. The juvenile court reviewed new documents that reflect that CRIT received the new ICWA notice HSA sent. There was a signed certified mail return receipt dated May 21, 2012. The court found HSA "has given notice pursuant to ICWA."

At a July 3rd hearing, the juvenile court reviewed a letter from Cynthia Martinez of the CRIT Office of Social Services. She said E.L. "and the relatives listed are not enrolled members, nor eligible for enrollment with the [CRIT]. That determination on tribal eligibility and membership is conclusive. (*In re Karla C.*, *supra*,

113 Cal.App.4th at p. 174.) The court found that "the Indian Child Welfare Act does not apply to [E.L.]." The trial court's findings are supported by the evidence in the augmented record.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

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Lee Gulliver, under appointment by the Court of Appeal, for Defendant and Appellant.

Leroy Smith, County Counsel, Patricia McCourt, Assistant County Counsel, for Plaintiff and Respondent.